IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-971

D. C. TRANSIT SYSTEM, INC., *Petitioner*

v.

DEMOCRATIC CENTRAL COMMITTEE OF THE DISTRICT OF COLUMBIA,
BLACK UNITED FRONT,
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION, *Respondents*

BRIEF OF RESPONDENTS, BLACK UNITED FRONT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

RESTATEMENT OF THE CASE

D.C. Transit Systems (Inc.) (hereinafter "Transit") (as was its predecessor Capital Transit Company, hereinafter "Capital") was not so much a public utility as it was a real estate venture (App. 51a, 52a, 57a, 58a, 60a, 61a, 62a) (App. 150a).

The grant by Congress of a franchise to Transit was conditioned on the acquisition of Capital's assets and the conversion of a streetcar-bus system to an all bus system.

This requirement caused Transit to assume an undepreciated cost of tracks and streetcars of $5 million and a cost of removal of streetcar tracks and repairing and regrading of streets of $10 million. *The cost of both of these items was later paid for by the farepayers.* (App. 54a-56a) (App. 61a) (App. 117a).

At the same time, predictably, millions of dollars worth of land formerly employed for streetcar purposes automatically lost its usefulness to Transit and was transferred out of operating status ("below the line") at book value. (App. 3a) (App. 116a) (App. 146a) (App. 150a)

Transit and its stockholders received the benefit of the "useless" land to the extent of the excess market value over book value, and knew it would receive such benefit when the company and its assets were purchased.

The Washington Metropolitan Area Transit Commission (hereinafter "Commission") based its fare setting primarily on the basis of gross operating revenues (the operating ratio method) commencing in 1960. (App. 58a-59a)

Although the Commission did also consider the undepreciated costs of track and streetcar and the cost of track removal in fixing fares (App. 61a), it failed to consider the "income" from market value of the "useless" land. (App. 5a) The Court of Appeals held this omission to be error.

ARGUMENT

(Reason for Denying the Writ)

The Court of Appeals' holding was based upon the particular and unique facts (App. 2a) of this case (App. 148a-149a) and is not a general holding relating to other kinds of assets or to other utilities.

Central to this case was the fact that Congress and Transit "knew . . . that a good part of these same properties would . . . no longer be needed for transportation purposes" (App. 150a) when the stockholders acquired the stock of Transit.

And the Court of Appeals specifically did not deal with the "kind of situation . . . that would have existed had the properties been purchased outright by [the] investors." (App. 149a)[1]

What the Court of Appeals held was that in this particular and unique fact situation "that in passing on Transit's application for higher fares, the Commission should have considered the appreciation in the value of certain of Transit's landholdings occurring while the lands were in service and prior to this transfer from operating to non-operating status." (App. 142a)

The Court of Appeals rightly declined to deal with the questions raised in the two Amicus briefs and in the petition of Transit itself (what happens if a regulatory agency takes into account the market value

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[1] As the Amicus Brief of Potomac Electric Power Company points out, page 3, footnotes # 1 and 2, there are cases pending before the Court of Appeals on appeal from the Federal Power Commission that present the issue sought to be raised by Transit and the Amicus Briefs, uncomplicated by the unique fact issues present in this case.

rise of land purchased by a utility in the normal course of business which then discards it?), because the Court's holding has no such broad application.

The Court of Appeals' decisions were based on a set of facts entirely unique to the case of Transit. The Court of Appeals decided that in passing on Transit's several fare applications it should have considered the income generated by land which everyone knew was to be removed from use for streetcar service at the time the stockholders acquired Transit. These cases do not present Fifth Amendment questions since they do not involve *all* acquisitions of property by utilities, or even all utilities, but only the unique case of *one* unique acquisition of land in the District of Columbia under unique circumstances.

CONCLUSION

For the reasons stated above, we respectfully pray that the Court deny the petition for writ of certiorari.

Respectfully submitted,

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